



TC04191

Appeal number: TC/2013/1037

*VAT – online filing – whether breach of right to manifest religion – on facts no
– application of Reg 25A VAT Regs – appeal dismissed as appellant did not
qualify for relief*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

EXMOOR COAST BOAT CRUISES LTD

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S
REVENUE & CUSTOMS**

Respondents

TRIBUNAL: JUDGE BARBARA MOSEDALE

Sitting in public at Barnstaple Civic Centre on 20 October 2014

Mr M Oxenham, Director, for the Appellant

**Mr J Wibberley, Counsel, instructed by the General Counsel and Solicitor to HM
Revenue and Customs, for the Respondents**

DECISION

1. The appellant appeals against decisions of HMRC refusing its application to file its VAT returns on paper. It was represented by its sole director and shareholder, Mr Oxenham.

Late appeal?

2. The original HMRC decision was contained in a letter dated 15 May 2012. The appellant asked for a review of this decision; HMRC then issued a further decision (rather than a review of the original decision) dated 12 October 2012 which gave the appellant the option of appealing or asking for a review. This happened again on 24 October 2012.

3. HMRC then issued a further decision dated 31 October. Again this decision was not described as a review decision but this time it did not offer the appellant the option of a review but merely stated it had 30 days to appeal. This might indicate that HMRC intended this decision to be the review decision but it was rather short and seemed to be intended to deal with a specific issue raised by Mr Oxenham (the meaning of 'incompatible') rather than containing HMRC's conclusions and reasoning as required by s 83F(6) Value Added Tax Act 1994 ('VATA').

4. There were further detailed letters from HMRC to the appellant reiterating the decision but dealing with various concerns on the subject raised by Mr Oxenham. None of these further letters described themselves as 'review' decisions nor did they give the appellant 30 days to appeal from the date they were issued.

5. The appellant eventually lodged an appeal on 1 February 2013.

6. Was this appeal late? The only contender as the 'review' decision was HMRC's letter of 31 October 2012 and if it was a review decision, then the appeal was lodged late. If it was not a review decision, then the appeal was not lodged late. This is because the appellant had requested a review and was (under s 83G(5) VATA) entitled to appeal at any time from 45 days after the review was requested until 30 days after the receipt of the conclusion letter under s 83F(9) VATA. None of the letters describes itself as a conclusion letter.

7. It does not matter. If the appeal was late, HMRC indicated that they had no objection to its lateness. I would admit the appeal because, even if technically late, HMRC had not made it clear to the appellant that the 31 October letter was the review letter from which 30 day period ran; the previous correspondence would reasonably have led a person to believe he would be given a new 30 day period each time HMRC replied to a letter he wrote. So either the appeal was not late, or I have admitted it out of time. I go on to consider the appeal.

Background

8. Compulsory VAT online filing was introduced for all businesses with a turnover of over £100,000, and any newly registered business, with effect from 1 April 2010 and for all businesses with effect from 1 April 2012. HMRC refers to businesses
5 liable to registered for online filing from 1 April 2010 as “first tranche” and those only required to be registered from 1 April 2012 as “second tranche”.

9. The appellant in this case was in the second tranche. Its turnover was below the VAT registration threshold and its registration was voluntary. The appellant applied to be exempt from online filing on religious grounds. By various letters dating back
10 to 15 May 2012, as mentioned above, the appellant’s claim for exemption from online filing on religious grounds was refused by HMRC. The main reason given was that HMRC were not satisfied that the appellant did not and would not use a computer and he had not demonstrated that he was a member of a religious society whose beliefs were incompatible with the use of a computer.

15 **The facts**

10. Mr Matthew Oxenham is the sole director and shareholder of the appellant. The appellant, being owned and controlled by him, is in effect his alter ego. The appellant’s business is running boat cruises (sight-seeing and fishing) out of Lynmouth harbour.

20 11. An agent completes its PAYE returns online; an accountant submits its corporation tax returns online. Mr Oxenham personally completes the VAT return and wishes to continue submitting it by paper.

25 12. Mr Oxenham has interests in other businesses. He owns holiday cottages. Glen Lyn Generations Ltd (‘Glen Lyn’) is owned by him and his parents, although he is the major shareholder. All three of them are its directors. The company operates a small hydro electric plant. That business is also VAT registered. It was in ‘tranche 1’ due to its turnover. By letter dated 16 July 2010, Mr M Oxenham requested exemption from online filing, which was refused.

30 13. Since then, Glen Lyn’s VAT returns have been submitted electronically by an agent appointed by the company. Its corporation tax return is submitted online by an accountant.

14. The Tribunal had in front of it as evidence the many letters passing between Mr Oxenham and HMRC; it also heard oral evidence from Mr Oxenham.

35 15. HMRC also produced notes of very long phone conversations between Mr Oxenham and various HMRC officers. Mr Oxenham accepted these phone calls took place but challenged (in advance of the hearing) the accuracy of the officers’ notes about them. HMRC was unable to obtain the recordings of the phone conversations; nor did HMRC produce as witnesses the officers who had spoken to Mr Oxenham on the phone.

16. In assessing the reliability of the notes I took into account that they appear to be a contemporaneous record and the only one which I have of what was said. On the other hand, Mr Oxenham attended to give oral evidence and challenged the accuracy of parts of the notes, whereas the officers who took the notes did not attend so I was
5 unable to judge how reliable their notes might be. However, I also took into account that, overall, the notes were credible in that they gave an impression of Mr Oxenham very similar to the impression I gained of him having heard him in Tribunal. For instance, as in Tribunal, they showed he was happy to discuss his beliefs on climate change at length but his claim to be a member of a religious group was not given with
10 any details that made it credible.

17. To a large extent the credibility of the notes did not matter; but there were some things in the notes which Mr Oxenham considered inaccurate. The most glaring was whether Mr Oxenham had actually said in one of the phone calls, as the note recorded, that he belonged to several religions but 'the main one would be paganism'.
15 He denied he said this but he did accept that paganism had been discussed in the phone call and that he had said that he studied many religions and that he found paganism interesting.

18. While for the reasons explained below and briefly mentioned above, I had real doubt over Mr Oxenham's claim that he was a member of the Jinite sect of the Plymouth Brethren. Nevertheless, as I only had his live evidence of what was said in these phone calls, I accepted that he had not actually claimed to be a pagan but merely said that he was interested in paganism. The notetaker likely misunderstood him. Nevertheless, I do consider that the notes overall give a relatively accurate impression of the discussions between Mr Oxenham and the HMRC officers concerned.

19. I agree with Mr Wibberly that, on the basis of the telephone notes, it was clear that Mr Oxenham put his scientific beliefs to the forefront and (at least at first) was sounding out how he could obtain the religious exemption but without stating that he was a member of any particular religion nor couching his beliefs in terms of religion.
25

20. I agree with Mr Wibberley that Mr Oxenham clearly saw himself on something of a crusade against the requirement to file online. He considered the law unfair; he did not see why exemption had to be restricted to members of a religious group; he did not see why exemption had to be restricted to religious beliefs; he considered online filing was made compulsory merely to justify the cost of the online filing system; if he won his case he intended to apply for exemption for Glen Lyn
30 Generations Ltd and clearly hoped to persuade other persons to pursue exemption. He believed that refusing to file online was taking a stand against human behaviour inducing climate change.
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Was Mr M Oxenham a practising member of a religious society or sect?

21. Mr Oxenham did not refer to the Jinites until some way into his extended correspondence with HMRC, and then he only claimed to be 'affiliated' to them. In the hearing Mr Oxenham appeared reluctant to claim that he was a practising member of the Plymouth Brethren, saying that they were a 'disparate' group and there was 'no
40

test' to be a member. He also implied he was not a practicing member by saying he practiced his religion alone and did not accept he needed to be a member of a religious group to benefit from exemption. In cross examination, he disagreed with the statement that he was not a member of a religious group, and later on claimed that he was one of the Brethren.

22. I accept that as a child he attended Sunday School at the Plymouth Brethren Chapel near his home. The Chapel near his home has long since ceased to be a meeting place for the Brethren, although occasionally members come to see it and Mr Oxenham may speak with them. Mr Oxenham did not claim to attend any Brethren meetings.

23. He said he sympathised with the views of the Jimites, which on his evidence were a sect of the Plymouth Brethren which rejected electronic communications. However, I noted that while he had explained to me why he, personally, rejected the use of the internet, he did not explain to me the reason why the Jimites rejected the use of the internet, so I was not satisfied it was for the same reason that he rejected it (which I discuss below). Further, at the same time as sympathising with the Jimite rejection of electronic communication, he said he did not accept all the teachings of the Plymouth Brethren and in particular said he did not accept the view (which the Jimites shared) that women should be excluded from religious meetings.

24. He suggested his failure to claim membership of a religion in the earlier phone calls with HMRC was due to a natural reluctance to bare his soul to persons who (he said) clearly thought religion "weird". However, while I accept he might not like discussing his religion with strangers, he was also slow to claim membership of the Plymouth Brethren in the hearing, and failed to explain to me what Plymouth Brethren believe and why. I think that this is because he is not a member in any real sense, albeit he may share some of the views of some members of the Plymouth Brethren and/or Jimites, although not necessarily for the same reasons.

25. For these reasons, I did not consider his claim to be a practicing member of the Plymouth Brethren and/or Jimites to be reliable. I was not satisfied that Mr Oxenham was a practising member of the Plymouth Brethren nor any sect of it, nor of any other religion. That is not to say Mr Oxenham did not have religious beliefs (I address this below); but I was not satisfied he was a member of a religious group as he did not appear to adopt or practice the beliefs of any such group nor was there any evidence a member of any such group would see Mr Oxenham as being a member of it.

Did Mr Oxenham's beliefs preclude the use of the internet?

26. I accept, and HMRC did not really challenge, that Mr Oxenham beliefs in respect of the internet were sincere. What were those beliefs?

27. He described his beliefs as a mixture of science and religion. He believes that the Bible records human-induced climate change (the flood) and that it is morally wrong for humans to damage the earth by inducing climate change: he sees this as genocide of future generations. He believes that consumption of fossil fuels induces

climate change by increasing CO₂ in the atmosphere, and that internet usage puts more CO₂ in the atmosphere than aviation. He objects to 'paperless' communications on the grounds that he considers paper communications create 'carbon sinks' to reduce CO₂ in the atmosphere whereas electronic data centres burn massive amounts of carbon fuels thus increasing CO₂ in the atmosphere.

28. He considers internet usage morally wrong for other reasons too, such as the risk of people becoming psychologically addicted to it, and the ease at which mass communications open up possibilities for socially reprehensible behaviour like that of 'internet trolls'.

29. His beliefs mean that he does not own or personally use a computer. The appellant company uses an agent who submits other returns for this company online. Moreover, Mr Oxenham has paid someone to create a non-interactive webpage for the appellant company. This is, as he says, like a notice board. It is not possible to use it to book boat trips; it just advertises the existence of the company's business and gives users a telephone number to ring if they want to book a trip. He explained he decided to have a website because he considered it was necessary to halt declining numbers of customers as, if numbers fell much further, the long-established business would be uneconomic and have to cease trading.

30. He saw himself as weighing up competing principles; it was important to him to keep the long-established business going and to allow people to see nature and for those reasons he had compromised his objection to the internet to the extent of having a non-interactive webpage. He accepted that the appellant's boat used diesel fuel but this was acceptable to his principles on the basis that being on his boat prevented his passengers undertake other activities which might release even more CO₂ into the atmosphere and in any event he hoped to convert to more environmentally friendly fuel in future.

31. So far as Glen Lyn Generations Ltd was concerned, he had consented to the agent filing returns online as he did not want his elderly parents, who were the other directors, to be stressed by his making objections to HMRC. His parents do not use the internet but they do not share his beliefs either.

32. His beliefs mean that he persists in making objections to using the internet. He won the right to apply by post for the grant to install log burners in his holiday cottages, and the right to be informed by post of changes to fisheries bye-laws; he also won the right to apply by post for the grant to expand the Glen Lyn's capacity.

33. His beliefs mean that he is attempting to cut out the use of fossil fuels in his various businesses. Glen Lyn Generations Ltd is in the process of increasing its capacity so it can supply more local homes with fossil fuel free power. And as mentioned, he installed log burners for heating in his holiday cottages.

34. He would not de-register the appellant for VAT if he loses this case; the VAT reclaim makes the difference between financial viability or failure.

35. In summary, while Mr Oxenham has strong beliefs against the use of the internet, his beliefs do not preclude him using the internet.

Did Mr Oxenham's beliefs preclude use of other forms of electronic communication?

5 36. Mr Oxenham owned and used a television. He clearly used a telephone and demonstrated that he carried and used a mobile phone. He said he had no objections to TVs or telephones as TVs were not interactive, and telephones were not means of mass communications. He later said, somewhat contradicting this, that the telephone was a necessary evil and that he preferred face to face communication.

10 37. His views on the telephone reinforced the view of his evidence on the internet: he did not like using telephones or the internet but he was prepared to use them (or have others use them on the appellant's behalf) when he thought it justified. He used the internet rather less than he used telephones.

The law

The law on online filing

15 38. Section 135 of the Finance Act 2002 permitted HMRC to make secondary legislation requiring VAT registered persons to file online. The primary legislation provided as follows:

s 135 Mandatory e-filing

20 (1) The Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") may make regulations requiring the use of electronic communications for the delivery by specified persons of specified information required or authorised to be delivered by or under legislation relating to a taxation matter.

(2) Regulations under this section may make provision -

25 (a) as to the electronic form to be taken by information delivered to the Revenue and Customs using electronic communications;

....

(e) for treating information as not having been delivered unless conditions imposed by any of the regulations are satisfied;

30

(4) Regulations under this section may -

(a) allow any authorisation or requirement for which the regulations may provide to be given or imposed by means of a specific or general direction given by the Commissioners;

35

(7) The power to make provision by regulations under this section includes power -

...

(c) to make different provision for different cases.

(8) References in this section to the delivery of information include references to any of the following (however referred to) –

5 (a) the production ... to a person of any information, account, record or document

....

(d) the making of any return, claim, election or application.

....”

10 39. HMRC laid secondary legislation in accordance with its powers under s 135 before Parliament. This became new regulation 25A of the Value Added Tax Regulations 1995/2518 (“VAT Regulations”). This provided that with effect from 1 April 2012 as follows – I have underlined the most significant part -

25A VAT Regulations

15 (1) Where a person makes a return required by regulation 25 using electronic communications, such a method of making a return shall be referred to in this Part as an ‘electronic return system’.

20 (2) Where a person makes a return or a final return on the relevant form specified in a notice published by the Commissioners such a method of making a return shall be referred to in this Part as a ‘paper return system’.

25 (3) Subject to paragraph (6) below, a person who is registered for VAT must make a return required by regulation 25 using an electronic return system whether or not such a person is registered in substitution for another person under regulation 6 (transfer of a going concern).

(4) In any case where an electronic return system is not used, a return must be made using a paper return system.

(5)

(6) However a person –

30 (a) who the Commissioners are satisfied is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, or

(b) to whom an insolvency procedure as described in any of paragraphs (a) to (f) of section 81(4B) of the Act is applied ...

35 is not required to make a return required by regulation 25 using an electronic return system.

(7)

(8) A direction under paragraph (8) above may in particular –

40 (a) modify or dispense with any requirement of Form 4 or Form 5 (as appropriate),

(b) specify circumstances in which the electronic return system may be used, or not used, by or on behalf of the person required to make the return.

5 For the purposes of sub-paragraph (b), the direction may specify different circumstances for different cases.

.....

40. As already explained, the appellant asked for, and was refused by HMRC, exemption from liability to file online under regulation 25A(6) above.

Interpretation of UK legislation ignoring human rights law

10 41. It was HMRC's position that the decision to refuse exemption was correct. Looking at Regulation 25A as it stands, and ignoring the possible implications of the Human Rights Act 1998 ("HRA 1998"), HMRC's position was that the appellant was not a member of a religious society or order whose beliefs were incompatible with the use of electronic communications. I consider the matter firstly ignoring human rights
15 law.

If the Commissioners are satisfied

42. The exemption is only available to those 'who the Commissioners are satisfied' fulfil the terms of the exemption. I did not understand Mr Wibberley to claim that this in any way limited the jurisdiction of the Tribunal and in particular HMRC were
20 not claiming that my jurisdiction was supervisory only. I read regulation 25A(6)(a) as if the words 'who the Commissioners are satisfied' were simply not there.

Whose beliefs are incompatible...

43. Mr Wibberley considered that my decision in *Blackburn* [2013] UKFTT 525 on the interpretation of s 25A(6)(a) at was right, for the reasons there given, and in
25 particular that it is the beliefs of the of the religious society to which the taxpayer belongs which matter for the purpose of the exemption:

30 "[26] Mr Woolfe recognised that there was an inherent ambiguity in the wording of regulation 25A(6). Whose beliefs need to be incompatible with the use of electronic equipment? Is it the beliefs of the appellants, or the beliefs of the religious society to which they belong? HMRC's case was that it was the beliefs of the religious society.

35 [27] As Mr Woolfe pointed out, any other interpretation appeared to make the reference to a religious society or order redundant. If it was the appellants' personal beliefs that mattered for the purposes of Regulation 25A(6)(a), why would there be a reference to a religious society or order at all?

40 [28] Mr Woolfe's view was also that the purpose of the restriction in regulation 25A(6)(a) was to allow HMRC an objective method to test whether the claim to religious exemption was genuine: it was feasible

to check whether a society or order had a particular tenet of faith and to check whether an appellant belonged to that society or order; but it would not be possible to check on the personal beliefs of individuals.

5 [29] Therefore, it was HMRC's case that the "whose" referred back to the religious society or order and not to the appellants. I agree for the reasons Mr Woolfe gave. The question for Reg 25A(6) (ignoring the Human Rights Act) is whether the appellants belong to a religious society or order where the beliefs of that society or order are incompatible with the use of electronic communications."

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44. Mr Oxenham did not really disagree with this interpretation as a matter of law; he considered that the regulations should not have provided for exemption in this form. In particular, he considered that personal beliefs ought to have been protected irrespective of whether the taxpayer was a member of a religious group and
15 irrespective of the beliefs of that religious group. I consider that what I said here in *Blackburn* was correct.

Statutory interpretation

45. Mr Oxenham referred me to a passage in Hansard where the religious exemption was promoted as an amendment to the blanket requirement to file online.
20 His point was that there was a reference to a member of the Plymouth Brethren who was a telephone engineer thus suggesting that while the exemption was clearly intended to benefit members of this religious organisation, Parliament cannot have intended the using a telephone to be within 'electronic communication'.

46. Mr Wibberley's view was that I could not consider Hansard. He said I could
25 not consider Hansard unless the legislation was ambiguous or gave rise to absurd result and in any event he did not consider it gave insight into how it was intended to be interpreted.

47. Regulation 25A(10) provides:

(10) In this section –
30 "electronic communications" includes any communications by means of an electronic communications service

48. The definition of "electronic communications service" was substituted by Schedule 17 of the Communications Act 2003, and, although this does not appear to be expressly stated, it appears it was intended to bear the meaning given to that
35 expression in that Act which was (from section 32(2):

"electronic communications service" means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service.

40 49. While telephones now utilise electronic systems, so far as I understand it they do not have to do so. It would not seem correct therefore to describe a telephone

services as one consisting in or having as its principle feature the conveyance by means of an electronic communications network of signals. But if this is not so, the provision is ambiguous and the reference to the committee debate in Hansard would suggest that the promoters of the secondary legislation did not include ‘telephone’ within ‘electronic communications service’.

50. Having said that, I do not see how it helps Mr Oxenham. He does use landlines and mobile phones, but he occasionally uses the internet too. And the internet is clearly intended to be within the definition of ‘electronic communications service’.

Meaning of ‘incompatible’

10 51. A large part of Mr Oxenham’s correspondence with HMRC prior to the appeal was concerned with the definition of ‘incompatible’. Mr Oxenham maintained that it merely meant ‘not in harmony’ with his beliefs. It was his case that using the internet was not in harmony with his beliefs (outlined at §26-35 above) albeit that sometimes he felt compelled to use it (permitting agents to file other tax returns on line and to
15 advertise the appellant’s business). He did not like having to use the internet and only did so when he felt compelled, by law or circumstances, to use it.

52. I do not agree. ‘Incompatible’ means incompatible. It means it must be contrary to the beliefs of that religion to use the internet. The legislation does not give exemption to members of a religion which teaches that it is preferable not to use
20 the internet but that it can be used when economic or other necessity justifies it.

53. In any event, this argument was largely sterile because Mr Oxenham did not satisfy me that he was a member of the Plymouth Brethren or Jimites.

Conclusion

25 54. My conclusion therefore, taking into account my findings of fact, are that the appellant company is unable to benefit from s 25A(6)(a) because:

- (1) The appellant does not have beliefs as it is a company
- (2) Even if its director’s beliefs were the beliefs to which the legislation referred, Mr Oxenham is not a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications.

30 55. I reach this latter conclusion because:

- (1) I have not found Mr Oxenham to be a member of any religious society or order and in particular I have not found him to be a member of the Plymouth Brethren or the Jimites;
- (2) Mr Oxenham is certainly not a *practicing* member; if the Plymouth Brethren or Jimites do have beliefs incompatible with the use of electronic
35 communications then Mr Oxenham does not practice this belief as he uses the internet, for instance, to advertise the services of the appellant company.

(3) It was an in any event not proved to me that the beliefs of the Plymouth Brethren or the Jimites are incompatible with the use of electronic communication. While Mr Oxenham explained his beliefs to me, he did not explain those of the Plymouth Brethren or Jimites.

5 *Interpretation of Reg 25A in light of human rights law*

56. Mr Wibberley referred me to the European Convention on Human Rights ('the Convention') and the Human Rights Act 1998 ('HRA'). Section 3 of the Human Rights Act provides as follows:

"3 Interpretation of legislation.

10 (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

15 (a) applies to primary legislation and subordinate legislation whenever enacted;

(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and

20 (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

57. The effect of this is that primary and secondary legislation must be read in so far as possible as consistent with the European Convention on Human Rights ("the Convention"). This goes well beyond giving legislation a purposive interpretation: the legislation must be read as consistent if at all possible to do so.

58. To read Reg 25A compatibly with the Convention, I need to determine what the appellant's human rights in this context are, in order to determine if giving a normal statutory interpretation to Reg 25A would breach them.

30 *Freedom of thought, conscience and religion*

59. Article 9 of the Convention provides as follows:

35 "1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of

public order, health or morals, of for the protection of the rights and freedoms of others.”

5 60. The question in this case is whether the VAT online filing regulations have interfered with the appellant’s right to *manifest* religion and beliefs in practice and observance.

61. Logically, the first question to deal with is whether the appellant company has any human rights, and the related question of whether Mr Oxenham’s human rights can be contravened by laws applying to the appellant company.

Corporate appellants

10 62. Mr Wibberley considered the decision I reached on the human rights of companies in the case of *L H Bishop* [2013] UKFTT 522 (TC) was wrong. In that case I ruled:

15 [562] I therefore consider that the Convention properly interpreted applies to give human rights to companies where those companies are the alter egos of their owners. Companies have a right to a private life where that private life is the private life of the alter ego of the company.

20 [563] In conclusion, I consider that it is irrelevant to the first and fourth appellant’s case that they are incorporated companies: they have the same human rights as their owners would have had had they chosen to conduct their business without incorporation.

25 63. Mr Wibberley’s view was that to consider that the appellant company had human rights because it was the alter ego of its director/shareholder was impermissibly lifting the corporate veil. The Supreme Court has recently reaffirmed the legal barrier between companies and their owners in *Prest v Petrodel* [2013] UKSC 34. In that case Lord Sumption said:

30 “Subject to very limited exceptions, most of which are statutory, a company is a legal entity distinct from its shareholders. It has rights and liabilities of its own which are distinct from those of its shareholders. Its property is its own, and not that of its shareholders. In *Salomon v A Salomon and Co Ltd* [1897] AC 22, the House of Lords held that these principles applied as much to a company that was wholly owned and controlled by one man as to any other company.
35These principles are the starting point for the elaborate restrictions imposed by English law on a wide range of transactions which have the direct or indirect effect of distributing capital to shareholders. The separate personality and property of a company is sometimes described as a fiction, and in a sense it is. But the fiction is the whole foundation of English company and insolvency law. As Robert Goff LJ once observed, in this domain "we are concerned not with economics but with law. The distinction between the two is, in law, fundamental": *Bank of Tokyo Ltd v Karoon* (Note) [1987] AC 45, 64. He could justly have added that it is not just legally but economically fundamental,

since limited companies have been the principal unit of commercial life for more than a century. Their separate personality and property are the basis on which third parties are entitled to deal with them and commonly do deal with them.”

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64. However, that case was not about whether companies have human rights and moreover was a statement of English common law and not European human rights law. The HRA 98 is a statute and is supreme over English common law. In so far as the HRA incorporates into English law the Convention, and the ECHR’s
10 interpretation of it, then the question of whether a company has human rights is one that must be answered consistently with the Convention and not English common law.

65. While it is clear that at least in common law a company is an entirely separate legal entity from the individuals who own and control it, nevertheless it appears that civil law has a less rigid demarcation between the company and its owners, and as the
15 European Court of Human Rights is largely comprised of civil law judges, their views would be expected to prevail. So what has the ECHR said on the question of human rights of companies?

66. In *Pine Valley Developments Ltd and others* [1991] ECHR 12742/87 two appellant companies and the owner/director of those companies claimed a breach of
20 the Convention. The ECHR found that there was a breach of A1P1 (the right to property) combined with A14 (the right not to be discriminated against) against one of the companies and the owner of the companies. All the court said about the corporate status of this ‘victim’ was:

25 “[42] As to the merits of the pleas, the Court would make at the outset the general observation that Pine Valley and Healy Holdings were no more than vehicles through which Mr Healy proposed to implement the development for which outline planning permission had been granted. On this ground alone it would be artificial to draw
30 distinctions between the three appellants as regards their entitlement to claim to be ‘victims’ of a violation.”

67. This is a clear statement by the Court that a company could be a victim of a breach of human rights. This means that the Court ruled (albeit without hearing argument) that a company can have human rights: and as I have said the Court went on to find that the company was a victim of a breach of its human rights.

35 68. The basis of the Court’s decision in this case was clearly that the companies concerned were the alter egos of their owner. That is true in this case too.

69. While not directly on point, the ECHR also considered the position of companies in *Societe Colas Est v France* (2004) 39 EHRR 17 and said:

40 “[41] The Court reiterates that the Convention is a living instrument which must be interpreted in the light of present-day conditions. As regards the rights secured to companies by the Convention, it should be pointed out that the Court has already recognised a company’s right

5 under Art 41 to compensation for non-pecuniary damage sustained as a result of violation of Art 6(1) of the Convention. Building on its dynamic interpretation of the convention, the Court considers that the time has come to hold that in certain circumstances the rights guaranteed by Art 8 of the Convention may be construed as including the right to respect for a company's registered office, branches or other business premises."

10 70. Can a company have a right to manifest religion when a company itself is inchoate and unable to have any beliefs at all? The closest case in the ECHR is that of *Tinnelly & Sons Ltd and others v UK* [1998] 4 BHRC 393. The applicant was a company based in Northern Ireland which alleged that it was the victim of unlawful religious discrimination. Its allegation was that the local government did not award it a contract as the company was controlled by persons who were Roman Catholic. However, the Court decided the case in the appellant company's favour under Article 15 6 (the right to a fair hearing). As it was not necessary in the particular circumstances it did not go on and decide the discrimination point, even though the UK Government had in that case specifically questioned whether a company could have human rights.

20 71. My conclusion from *Pine Valley* is that a company has human rights if and to the extent it is the alter ego of a person (or, potentially, a group of people). Therefore, it must be seen as being in the shoes of that person and must possess the same human rights because any other decision would deny that person his human rights.

25 72. Therefore, while it is ludicrous to suggest a company has a religion, or private life or family, nevertheless a company which is the alter ego of a person can be a victim of a breach of A9 (the right to manifest its religion) if, were it not so protected, that person's human rights would be breached.

30 73. HMRC say that this is not right: the remedy is for that person to take an action in their own name claiming that the treatment of his company is a breach of his personal human rights. But it is also HMRC's position that the owner of the company would not have the right ('locus standi') to bring an action in the Tribunal against the notice to file online served on the company. In HMRC's view, all Mr Oxenham could do would be to make a complaint direct to the European Court of Human Rights.

35 74. HMRC's position is unappealing: the Convention itself provides that in the determination of his civil rights a person is entitled to a fair and public hearing within a reasonable time. HMRC's position would deny him any national remedy at all for this alleged breach of his human rights. Further, if HMRC were right it would mean the Convention itself discriminates between a person who trades in their own name and a person who trades via a company. Yet, it is clear from *Pine Valley* that the Court cannot see a good reason to make such a distinction. I do not think the Convention does make such a distinction. Mr Oxenham's rights are the appellant 40 company's rights and can be relied on by the appellant in this Tribunal.

What kind of religious beliefs are protected?

75. HMRC accepted that A9 of the Convention protected more than just religious beliefs and accepted that potentially beliefs and a moral code surrounding human conduct which induces climate change could be protected by A9. However, they did not accept that Mr Oxenham's beliefs were protected by A9 in the circumstances of this case.

76. HMRC relied on the case of *Eweida* (ECHR 48420/10). In this case the European Court of Human Rights ("ECHR") said:

10 "[81. The right to freedom of thought, conscience and religion denotes views that attain a certain level of cogency, seriousness, cohesion and importance....Provided this is satisfied, the State's duty of neutrality and impartiality is incompatible with any power on the State's part to assess the legitimacy of religious beliefs or the way in which those beliefs are expressed...."

15 77. Mr Wibberley's view was that Mr Oxenham's belief, whether or not it was a religious belief, did not attain a sufficient level of cogency, seriousness, cohesion and importance to be protected by the ECHR. He pointed out:

- (1) Mr Oxenham will use the internet, although he prefers not to;
- (2) His main objection is to CO₂ emissions but he has not demonstrated that any CO₂ would be saved by sending in a paper return, as even a paper return would be entered electronically.
- (3) He could get an accountant to do it, as he already does for other returns.

25 78. A Tribunal is very reluctant to assess the quality of a persons moral or religious beliefs. Nevertheless, it has to be the case that the law cannot protect every belief as that would be a licence to everyone to pick and choose which laws they choose to obey and those that they ignore.

30 79. Mr Wibberley criticised the cogency of Mr Oxenham's beliefs on climate change: using a diesel boat would seem to have far greater CO₂ emissions than filing online 4 VAT returns per year. However, I do not need to rule on the quality of Mr Oxenham's beliefs in order to decide the case.

35 80. This is because the right relied on by the appellant is the right to manifest religion and belief in practice and observance. There is no suggestion that the requirement to file online interferes with Mr Oxenham's right to freedom of thought and his right to change his religion. So does it interfere with his right to manifest his beliefs?

40 81. The simple answer is that the obligation to file online does not interfere with Mr Oxenham's manifesting his beliefs and religion. This is borne out by the evidence. Mr Oxenham has beliefs, which, while they include a strong disinclination to use the internet, nevertheless are compatible with him using the internet to advertise his business and to file (via agents acting on his or his companies' behalf) a number of

other returns online. It is therefore apparent that requiring him to file another return online does not prevent him manifesting his religious or other beliefs.

5 82. Mr Oxenham's view was that requiring him to file online did prevent him manifesting his beliefs because any use of the internet was against his beliefs; but on the evidence that is not true. His beliefs enabled him to use the internet to some extent. His case seemed to be that he only used the internet in so far as he judged it economically necessary, whether to keep the appellant economically viable or to remain as a shareholder of a lucrative company whose other directors/shareholders did not share his views and did not choose to apply for online filing exemption.

10 83. In any event, it was his belief that the internet should not be used save where he judged it economically necessary to do so. Were it necessary to decide this point, I agree with Mr Wibberley that that belief does not attain a level of cogency, seriousness, cohesion and importance such that it should be protected. This is because his belief that computers should not be used is not so strongly held that he will make economic sacrifices for it; further, A9 cannot have been intended to protect
15 a belief system which allows the practitioner to pick and chose when it suits him to adhere to his principles as that would amount to allowing people to pick and choose when they can be compelled to obey the law.

Conclusion on human rights

20 84. For the reasons given above, the appellant's human right to manifest its beliefs is not infringed by the requirement to file its VAT returns online. S 3 of the HRA does not therefore require me to read s 25A in a way that is compatible with his human rights because Reg 25A does not infringe his human rights; it is compatible with his human rights.

25 85. I do not need to go on to consider s 6 HRA which requires the Tribunal to allow an appeal where not to do so would breach the appellant's human rights, because, for the same reasons given above at §81 and §83 dismissing the appeal does not breach the appellant's human rights. Nor do I need to consider whether, in this case, Reg 25A went further than permitted by s 6 HRA and/or was beyond the scope of the
30 enabling legislation because, again, the appellant's human rights were not breached by the requirement to file online.

86. Reg 25A must be given its ordinary statutory meaning and that reading is, as explained above, is that the appellant company is not entitled to exemption from online filing.

Note on proportionality

35 87. Although not referred to in this hearing, in *L H Bishop* §§863-886 I pointed out that the VAT Directive requires HMRC to act proportionately in implementing VAT rules and regulations. I do not consider that the appellant can succeed on this case on this basis either for the same reasons as given above. While no doubt EU law does
40 require HMRC to grant exemption to some persons from the requirement to file

online, such as if they are elderly or disabled and have difficulties using computers, I cannot see how it could be said that proportionality would require exemption to be given to someone whose objection is on religious/moral grounds but is nevertheless prepared in some circumstances to instruct agents to use the internet on his behalf.

5 88. The appeal is dismissed.

89. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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BARBARA MOSEDALE
TRIBUNAL JUDGE

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RELEASE DATE: 17 December 2014

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